Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana	)	CC Docket No. 97-231

COMMENTS OF AT&T CORP. IN OPPOSITION TO BELLSOUTH'S SECTION 271 APPLICATION FOR LOUISIANA

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AT&T Corp. ("AT&T") respectfully submits these comments in opposition to the application of BellSouth Corp. et al. ("BellSouth") for authorization to provide interLATA services originating in Louisiana.

INTRODUCTION AND SUMMARY OF ARGUMENT

Less than 5 weeks after filing a defective section 271 application for South Carolina, and a mere two days after the Department of Justice had formally concluded that BellSouth had fallen "well short" of meeting its obligation to open its local markets to competition,[1] BellSouth filed the instant application for Louisiana. Like the previous application, this one comes with admissions of noncompliance from the applicant and of defiance of this Commission's authority from the state commission. Like the previous application, this one is completely without merit.

In particular, BellSouth again admits that its application does not comply with this Commission's requirements in the area of "pricing, combinations of [network elements] . . . and

[1] Evaluation of the Department of Justice, BellSouth South Carolina 271 Application, at 28 (No. 97-208) (filed Nov. 4, 1997) ("DOJ South Carolina Eval.").

certain OSS performance measurements and standards." Br. 24. And in reality, its application reflects a blatant disregard for even more of the Commission's requirements than BellSouth is willing to admit, including its obligations to provide nondiscriminatory access to operations support systems and other individual network elements, and to provide CLECs with the ability to resell BellSouth services free of unlawful restrictions.

The State Commission, in its own fashion, has been equally candid about its agenda. The Louisiana PSC ("LPSC") voted 3-2 to support BellSouth's application the day after this Commission released the Ameritech Michigan Order,[2] but not because a careful and independent investigation had concluded that BellSouth had fully implemented its checklist obligations as set forth by this Commission. Indeed, the LPSC staff -- attempting to follow this Commission's rules -- had recommended against approval, in part because the LPSC and its staff had not had time to read or consider the Ameritech Michigan Order. But in the words of one Commissioner:

> If the FCC had their way, we would have a national set of rules that would cut the Commission out of the decision making process. Speaking for myself, I'm not going to be intimidated or forced into the position by the FCC. I think we must make our own decision based on Louisiana markets and do what's best for Louisiana.[3]

The LPSC's determination that BellSouth has met its checklist obligations is thus not only uninformed by consideration of this Commission's requirements for checklist compliance, but indifferent to them.

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[2] In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (rel. Aug. 19, 1997) ("Ameritech Michigan Order").

[3] Partial Minutes of August 20, 1997 Open Session of the LPSC, held in Baton Rouge, LA (attached as App. C-1, Tab 135 to BellSouth's Application herein), at 2.

That BellSouth has pervasively failed to implement the checklist is further confirmed by the lack of any significant competition in BellSouth's Louisiana markets today. In particular, while AT&T has long sought to enter the markets in BellSouth's territory using a combination of BellSouth's network elements, BellSouth has persistently and effectively thwarted such entry. Most notably, in addition to violating Rule 51.315(b) before it was vacated last month, BellSouth has blocked UNE-based competition by (1) failing to comply in any respect with its obligation to provide elements in a manner that allows new entrants to combine them; (2) failing to provide, or even to develop the capability to provide, individual network elements such as local switching; and (3) imposing exorbitant recurring and non-recurring charges for network elements that are designed to recover BellSouth's embedded costs.

First, this application abandons almost any pretense of demonstrating compliance with BellSouth's obligation to provide network elements, on an unbundled basis, in a manner that allows entrants to combine them. BellSouth cannot point to a single "concrete and specific legal obligation" in Louisiana (Ameritech Michigan Order ¶ 110) that describes the terms and conditions on which it would allow elements to be combined. It is therefore forced to rely upon testimony from its employees that BellSouth will require CLECs to combine the loop and switching elements in collocated space. Br. 48.

This testimony is both legally insufficient to create the "concrete" legal obligation that the Act requires, and too vague about terms and conditions to provide the requisite "specificity." See Ameritech Michigan Order ¶ 110; cf. DOJ South Carolina Eval. at 19-23. Furthermore, the testimony is fundamentally flawed because it reveals BellSouth's intent to impose collocation as a precondition to any combining of the loop and switching elements, a requirement that is patently anticompetitive and unlawful. BellSouth is seeking here to impose a limitation on

access to combinations of elements that is contrary to section 251(c)(3) and that will ensure that such combinations can never, as a practical matter, be used to bring significant local competition to Louisiana. Collocation would impose significant service outages upon and otherwise impair the quality of service to new CLEC customers, delay the date at which CLECs could offer such service, narrowly gate the number of customers that could be provisioned with service in any one day, and impose enormous, prohibitive costs in the form of upfront and recurring charges.

Collocation is also an unlawful restriction, because it would require entrants to deploy their own facilities in order to combine UNEs, contrary to the Eighth Circuit's express holding that deployment of such facilities is not required. Although, under the Eighth Circuit's decision that "unbundled" means "separated," any method of combining elements will impose service outages, delays, and unnecessary expense on users of adjacent UNEs, there are alternatives to collocation -- involving both manual and electronic methods of combining elements -- that are consistent with the Eighth Circuit's ruling and that could help mitigate the grossly anticompetitive burdens that are inherent in any collocation requirement and in the Eighth Circuit's unbundling decision.

Second, regardless of how elements are combined, BellSouth has not developed the capabilities required to provide unbundled local switching and other individual elements in compliance with the checklist. For example, BellSouth cannot provide CLECs with the usage and billing data that they will need to bill interexchange carriers for exchange access services and to bill for reciprocal compensation. It cannot provide CLECs with access to vertical features except in the combinations that BellSouth currently offers to its customers. And it cannot yet provide CLECs with customized routing. Thus, BellSouth remains unable to offer

CLECs the ability to use the full features, functions, and capabilities of the local switching element.

In addition, BellSouth has yet to establish cost-based rates for the individual elements it offers. The rates now in effect and approved by the Louisiana Commission are based on cost studies that BellSouth labeled "forward-looking," but admitted were based upon BellSouth's actual, embedded costs, not upon forward-looking costs. Further, due to unreasonable time constraints imposed by the LPSC and the "closed" nature of the BellSouth cost studies, the independent consultant retained by the LPSC's staff was able to review only a small subset of the many cost studies that BellSouth proposed. And even as to those she reviewed, she focused on only selected generic inputs rather than the myriad other assumptions that reflected the studies' embedded-cost focus. For these reasons, the LPSC's ALJ, in a detailed opinion, stated that she could not conclude that all of BellSouth's rates were cost-based and that additional proceedings were needed. Without explanation, the LPSC ignored this recommendation.

BellSouth has also frustrated efforts to compete through resale. Even for this limited form of entry, BellSouth has succeeded in delaying or in some cases blocking altogether the access to BellSouth's services that new entrants need successfully to compete. BellSouth has yet to deploy electronic interfaces with even the capability to provide nondiscriminatory access to its OSS, let alone a demonstrated record of nondiscriminatory performance. Experience with BellSouth's existing interim interfaces has revealed major defects -- such as the collapse of the BellSouth's Regional Street Address Guide ("RSAG") in response to small increases in volumes of simple POTS resale orders -- that have undercut AT&T's ability to compete. To conceal from the Commission the magnitude of these and other problems, BellSouth has withheld data that demonstrates inadequate performance, misrepresented the data it has submitted in an attempt

to define away problems, and invented a frivolous theory in which purported misclassification of the "rubric" under which evidence of nondiscriminatory performance is requested becomes grounds for not providing it at all.

These and other problems were not lost on the ALJ or the LPSC staff, who concluded, after 7 days of hearings, that BellSouth had not demonstrated that it was capable of providing nondiscriminatory access to OSS. Yet a divided LPSC chose to ignore both those recommendations and the rules and framework set forth by this Commission in the Ameritech Michigan Order. Instead, it relied on a brief, untranscribed "demonstration" of BellSouth's systems that the ALJ did not attend, that two CLECs were given only a limited opportunity to rebut, and to which other CLECs in attendance were not afforded an opportunity to respond.

BellSouth has erected yet other illicit obstacles to effective resale competition. It has imposed unlawful restrictions on the ability of CLECs to resell contract service arrangements, thereby permitting BellSouth to insulate the market for medium-to-large business customers from competition. And BellSouth continues to exploit its failure to provide customized routing and AT&T's consequent dependence on purchasing BellSouth's OS/DA services by placing its own brand on all of the OS/DA services it resells to new entrants.

To grant BellSouth's application in these circumstances would reward BellSouth only for its extraordinary success in defying and delaying compliance with its legal obligations under the Act, and for securing the LPSC's indifference to and blessing of that misconduct. Far from hastening the onset of local competition, granting BellSouth's application now would ensure that local competition would never materialize in Louisiana, for BellSouth would have no incentive to provide new entrants with the nondiscriminatory access to interconnection, unbundled network elements, and resale of BellSouth's services that they cannot get today. BellSouth would thus

quickly become and long remain the only significant carrier able to offer the bundles of local and long-distance service that many customers prefer.

That is the very outcome Congress intended to prevent when it passed the Act. Congress recognized what common sense confirms: that the potential consumer welfare gains of adding one more competitor to an already highly competitive long distance market are dwarfed by the potential gains of adding new competitors to the long-monopolized local markets. BellSouth's determined refusal to accept its market-opening obligations confirms that Congress's goal will be achieved in Louisiana only if compliance with those obligations is a precondition of long distance authorization.

Part I of this brief sets forth in more detail the ways in which BellSouth has failed to make available each of the items of the competitive checklist. In particular, this section sets forth BellSouth's failure:

> to make combinations of network elements available, including combinations that entrants would themselves assemble directly from BellSouth's network;
>
> to make individual network elements available (for providing exchange access, and accessing vertical features and customized routing);
>
> to price unbundled network elements at cost;
>
> to make nondiscriminatory access available to its OSS; and
>
> to make its contract service arrangements available for resale without unlawful restrictions.

Each of these is independent grounds for denying BellSouth's application.

Although the Commission need not reach the issue, Part II explains that this application also does not satisfy the facilities-based competition requirements of section 271(c)(1)(A). Contrary to BellSouth's claims, BellSouth has failed to demonstrate that PCS service is a

substitute today for wireline service, so PCS providers cannot today be considered "competing" providers within the meaning of section 271(c)(1)(A). BellSouth's alternative argument, that other carriers "are entering" the Louisiana market and "will serve residential and business customers," (Br. 17, 19), is insufficient on its face to demonstrate the presence of an actual competing provider today; at the same time, these assertions of competitors on the verge of entry definitively foreclose any conceivable basis for invoking Track B.

Part III shows that BellSouth not only operates today in violation of the nondiscrimination and separation requirements of section 272, but that it has deliberately refused to produce the information concerning affiliate transactions that this Commission has held is essential to any assessment of future compliance with section 272. Finally, Part IV explains why it would be contrary to the public interest to grant BellSouth's application before facilities-based competition is irreversibly established in its local markets.

I. BELLSOUTH HAS NEITHER PROVIDED NOR MADE AVAILABLE EACH ITEM OF THE COMPETITIVE CHECKLIST

Section 271 requires proof either that the BOC "is providing" and has "fully implemented" "each" item of the competitive checklist, (§ 271(c)(2)(A), (B), (d)(3)(A)(i)), or that "all of the" checklist items are "generally offered" pursuant to a Statement of Generally Available Terms and Conditions ("SGAT"). § 271(d)(3)(A)(ii). As with its South Carolina application, BellSouth again is forced to admit that it has not met these requirements. It concedes that its application, in important respects, is premised upon its own "positions" which it "preserves . . . for resolution by the courts," rather than upon the rules and requirements that this Commission has set forth. Br. 24. BellSouth admits noncompliance with respect to "pricing, combinations of UNEs . . . and certain OSS performance measurements and

standards," id., and should have admitted noncompliance with respect to individual network elements (including, but not limited to, operations support systems) and resale restrictions. On this basis alone, its application must be denied.

Indeed, BellSouth has yet to make even legally binding written commitments to fulfill each of its checklist obligations. For example, although the Eighth Circuit's rehearing decision may, for the time being, have freed BellSouth to insist upon separating network elements, BellSouth remains obligated by the plain terms of section 251(c)(3) to provide "nondiscriminatory access" to network elements "in a manner that allows requesting carriers to combine" them free of any unreasonable restrictions. 47 U.S.C. § 251(c)(3). Neither in its SGAT nor in its interconnection agreements has BellSouth even committed to providing such access.

It is therefore plain in Louisiana, just as it was in South Carolina, that BellSouth also is neither providing nor generally offering to provide each item of the competitive checklist, and that its application must be denied under either Track A or Track B.[4] The record is

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[4] It is AT&T's position, which the Commission rejected in the Ameritech Michigan Order, that an application pursuant to Track A must contain proof that the applicant is actually furnishing each checklist item to at least one requesting carrier. But the Commission need not revisit that point here. BellSouth has not even signed binding legal commitments to provide each element on nondiscriminatory terms and conditions and in volumes that permit vigorous competition, let alone demonstrated that it could actually so provision each item upon request. Its application thus fails to satisfy both Track A and Track B. See, e.g., In re BellSouth Telecommunications Inc. Statement of Generally Available Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996, Docket No. 7253-U, at 7-8 (Georgia PSC Mar. 20, 1997) (BellSouth's SGAT "should not be approved so long as BellSouth has not demonstrated that it is able to actually provision the services of interconnection, access to unbundled elements, and other items listed in the statement and required under Sections 251 and 252(d)"); In re Petition for Approval of a Statement of Generally Available Terms and Conditions Pursuant to §252(f) of the Telecommunications Act of 1996, Alabama PSC Docket No. 25835, at 7 (October 16, 1997) ("Alabama PSC SGAT Order") (declining to approve SGAT because, inter alia, BellSouth's OSS were not (continued...)

overwhelming that BellSouth, despite repeated requests from AT&T, is unwilling and/or unable to provision unbundled switching, access to unbundled network elements, and access to OSS as required by the Act and this Commission's rules. It is equally clear that BellSouth has not yet made available unbundled network elements at prices consistent with the Act's requirements. And most notably, BellSouth seeks to use the Eighth Circuit's decision as an excuse not even to offer, in any meaningful sense, to comply with its obligations regarding combinations of network elements. Each of these defects, set forth below and discussed in further detail in accompanying affidavits, is an independent reason to reject BellSouth's application. Cumulatively, they illustrate the breadth of BellSouth's determined noncompliance with its duties under sections 251 and 252 of the Act and explain the lack of meaningful local competition in Louisiana.

A. BellSouth Neither Provides Nor Has Made Available Combinations Of The Loop and Switching Elements

Section 251(c)(3) imposes upon incumbent LECs a duty to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory," and to do so "in a manner that allows requesting carriers to combine such elements" in order to provide services. 47 U.S.C. § 251(c)(3). The Eighth Circuit, on rehearing, has now vacated the Commission's rule that prohibited incumbents from separating individual elements of their networks even in situations where a carrier requested unbundled access to elements that are already combined in

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[4] (...continued)
demonstrated to be operationally ready); In re: Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Acto of 1996, Florida PSC Order No. PSC-1459-FOF-TL (November 19, 1779) ("Florida PSC Order").

the incumbent LEC's network. That decision is irreconcilable with the plain language of the statute and fundamental principles of administrative law, as set forth in petitions for certiorari recently filed by the Commission and the United States, by AT&T and other parties, and by MCI.[5]a

As the Commission and the United States contend, the Eighth Circuit's decision effectively "converts one of the 1996 Act's most important pro-competitive tools into a statutory authorization of anti-competitive conduct." FCC Pet. at 26-27. The Eighth Circuit did so by asserting that elements could not be provided "on an unbundled basis" (§ 251(c)(3)) unless they were first "separated" or "uncombined." But that premise conflicts with "every judicial decision and other source" of which AT&T is aware -- including decisions of the federal courts and administrative agencies, and dictionary definitions -- that all define "unbundle" to mean stating a separate price for an item and giving users the option of declining to purchase it as part of a package. See AT&T Pet. at 23-24. By failing to acknowledge this precedent and to defer to this Commission's reasonable reliance upon it, the Eighth Circuit's decision blocks one of the key paths of entry that Congress intended the Act to create, with devastating consequences for the prospects of full-fledged local competition. Id. at 26-27; see FCC Pet. at 28.

But even accepting the Eighth Circuit's decision on its terms, that decision leaves undisturbed the incumbent LEC's obligation to provide access to network elements at "any" technically feasible point and to allow competitors to combine those elements on "rates, terms, and conditions that are just, reasonable and nondiscriminatory." § 251(c)(3). BellSouth fails

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[5] See Federal Communications Commission and the United States v. Iowa Utils. Bd., et al., No. 97-831, pet. for cert. (Nov. 17, 1997) ("FCC Pet."); AT&T Corp., et al. v. Iowa Utils. Bd., No. 97-826, pet. for cert. (Nov. 17, 1997) ("AT&T Pet."); MCI Telecommunications Corp. v. Iowa Utils. Bd., No. 97-829, pet. for cert. (Nov. 17, 1997).

to comply with this obligation. First, BellSouth has not committed itself in its SGAT or its interconnection agreements to any such rates, terms, or conditions. Second, the sole method that its witnesses propose for providing access to loop/switch combinations -- collocation -- is demonstrably an unreasonable restriction on access to those network elements. Finally, BellSouth's argument that collocation is the only method of access to network elements authorized by the Act is wholly without merit.

1. BellSouth Has Yet To Commit Itself Legally To Provide Access To Combinations Of Network Elements On Just, Reasonable, And Nondiscriminatory Terms And Conditions

In the Ameritech Michigan Order, this Commission held that to be "'providing' a checklist item, a BOC must have a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item." Ameritech Michigan Order ¶ 110. This is a threshold requirement for demonstrating compliance with any checklist item -- independent of the further requirement to "demonstrate that it is presently ready to furnish each checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality." Id. BellSouth does not and cannot point to any "concrete and specific legal obligation" with respect to combinations of network elements.

With respect to UNE combinations, BellSouth's SGAT states only that "[r]equesting carriers will combine the unbundled elements themselves." See BellSouth Louisiana SGAT II.F. Similarly, BellSouth's interconnection agreement with AT&T states only that "BellSouth shall offer each Network Element individually and in combination . . . ." AT&T/BellSouth Interconnection Agreement Part II, ¶ 30.5. Thus, BellSouth is forced to rely solely on the testimony of two employees, Mr. Varner and Mr. Milner, to describe the access to its network

elements that BellSouth is willing to provide to carriers seeking to combine elements. See BellSouth Br. 48. Such testimony is no substitute for the binding, enforceable legal commitment that this Commission has required. BellSouth offers no explanation for its decision to file this section 271 application before it has even attempted to make such a binding commitment in an SGAT or otherwise. For this reason alone, its application is premature and should be denied.

But BellSouth's noncompliance goes further still. Even the testimony of Messrs. Varner and Milner contains no attempt to set forth a sufficiently detailed set of rates, terms, and conditions for permitting carriers to combine network elements such as the loop and switching elements. Rather, that testimony simply restates, in effect, the offer contained in BellSouth's South Carolina SGAT that carriers seeking to combine the loop and switching elements must obtain collocated space in BellSouth's central offices, or negotiate other arrangements. See Varner Aff. ¶¶ 63-66; Milner Aff. ¶ 25. As the Department of Justice explained in its Evaluation of BellSouth's South Carolina application, a superficial offer limited to collocation -- even if contained in a state-approved SGAT or interconnection agreement -- would be insufficient to satisfy BellSouth's obligations under the Act. See DOJ South Carolina Eval. at 22-23.

Rather than heed the Department's counsel, BellSouth deliberately chooses to challenge it. BellSouth Br. 47. In BellSouth's view, it is entitled to refuse to set forth the terms and conditions of access to combinations of network elements because carriers to date have been "circumventing" the law by seeking access to existing combinations under Rule 51.315(b), and "[i]t would be premature for BellSouth unilaterally to establish detailed terms and conditions for unspecified services that may never be sought by CLECs in practice, even at the negotiation stage." Id. BellSouth thus apparently believes that it has no duty to establish terms and

conditions for collocation or other methods of combining elements because no CLEC has requested them.

This is nonsense. Prior to October 14, 1997, (the date of the Eighth Circuit's rehearing decision), Rule 51.315(b) was not stayed, and AT&T and others had a right to rely upon it to gain access to existing combinations of elements. Thus, at least prior to the Eighth Circuit's initial decision in July 1997, BellSouth's own assumption (used to project demand for unbundled loops) was that carriers would not use collocation when combining unbundled loops with unbundled switching. See Falcone/Lesher Aff. ¶ 18. And in the 23 days between the Eighth Circuit's rehearing decision and BellSouth's filing of this application, BellSouth advanced no concrete proposals for any CLEC to discuss. By contrast, AT&T, other state commissions, and even other RBOCs have begun to work through the implications of the Eighth Circuit's rehearing decision for CLEC access to combinations of network elements. See id. ¶¶ 97-122. But in BellSouth's region, it is BellSouth's own intransigence -- typified by its refusal to elaborate upon any recombination proposal -- that delays progress with respect to UNE-based entry in BellSouth's region. See Carroll Aff. ¶¶ 23-30. In short, BellSouth's attempt to blame CLECs for failing to develop concrete, specific, and binding alternatives to Rule 51.315(b) is preposterous.

2. Imposing A Collocation Requirement On Combinations Of The Loop And Switching Elements Is Unreasonable

Although the foregoing is sufficient grounds on which to deny BellSouth's application, the Commission should consider and reject BellSouth's position that a collocation requirement is a reasonable condition that can be imposed upon CLECs seeking to combine the loop and switching elements. In the joint affidavit of Mr. Robert V. Falcone and Mr. Michael E. Lesher, attached hereto as Exhibit E, the authors first fill in many of the blanks that BellSouth's

witnesses leave open concerning the terms and conditions that would accompany a collocation requirement, making "best-case" assumptions throughout. Falcone/Lesher Aff. ¶¶ 16-37. They then assess the impact of such a requirement on a CLEC's ability to use a combination of the loop and switching elements to compete with BellSouth. As their analysis demonstrates, a collocation requirement is inherently discriminatory, anticompetitive and a barrier to using combinations of UNEs to serve a substantial number of customers. Id. ¶¶ 38-96.

a. Loss of service during cutover

Most notably, BellSouth's combination-by-collocation requirement creates a serious risk that customers will be left without service for extended periods of time during cutover. Falcone/Lesher Aff. ¶¶ 39-50. In the physical collocation approach, there is no way to avoid some period of time in which the customer is out of service while service is disconnected and reconnected. Id. ¶ 39. Although the length of customer service outages would be reduced in a best-case scenario where a CLEC could "pre-wire" most of the necessary cabling and cross connections, the assumptions of BOC cooperation that underlie the best-case scenario are not likely to hold under real competitive conditions. Id. ¶¶ 39-42, 44-45. Of course, human error and system flaws could drastically increase this time. Id. ¶ 43.

Indeed, CLEC customers have already been subject to substantial service outages during the relatively simpler process of pure loop unbundling, which requires laying in only one new cross-connect rather than two. Id. ¶¶ 46-48. In BellSouth's region, ACSI has reported cutover outages routinely exceeding four hours that have "jeopardized ACSI's ability to retain existing customers and to attract new customers."[6] While enduring three-to-four hour delays during

[6] ACSI Comments, In the Matter of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-region, InterLATA Services in (continued...)

cutovers of large business customers, Worldcom has discovered that "BellSouth coordinated cutovers are anything but."[7] And Sprint has reported "problems in virtually all phases of the customer activation (or 'cutover') process for unbundled loops."[8] Such cutover problems are not unique to BellSouth.[9]

Although BellSouth contends that its conceded difficulties in provisioning loops are now a thing of the past, Milner Aff. ¶¶ 46-50, this assertion would provide no solace to CLECs even if it were true. The more complex process of combining loops and switching elements via collocation will inevitably generate a new round of cutover problems, which will threaten

[6] (...continued)
South Carolina, Affidavit of James C. Falvey, ¶ 34, FCC CC Docket No. 97-208 (October 20, 1997).

[7] WorldCom Comments, In the Matter of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in South Carolina, Ball Affidavit, ¶ 18, FCC CC Docket No. 97-208 (Oct. 20, 1997).

[8] Sprint Comments, In the Matter of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in South Carolina, at 16-17 and Closz Affidavit, ¶¶ 65-82, FCC CC Docket No. 97-208 (Oct. 20, 1997).

[9] See also Comments of Brooks Fiber, In the Matter of Application by Ameritech Michigan for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Michigan, at 30-31 and Exhibit M, FCC CC Docket No. 97-137 (June 10, 1997) (detailing Ameritech's "poor coordination of customer cutovers"); Hearing Transcript, In re Implementation of the Telecommunications Act of 1996; Bell Atlantic-Pennsylvania's Entry into In-Region, InterLATA Services Under Section 271, at 36, 107-111, 138-141, PA PUC Docket No. M-960840 (April 3, 1997) (NEXTLINK testimony describing Bell Atlantic's "atrocious" performance in cutting over loops).

customer service and burden CLECs with an overwhelming competitive handicap. Falcone/Lesher Aff. ¶¶ 39-45, 49.

b. Inherent provisioning limits

BellSouth's collocation process also "gates" market entry in several ways. Falcone/Lesher Aff. ¶¶ 51-72. First, to serve customers via the unbundled loop and switch, CLEC will have to collocate -- either physically or virtually -- in every central office they wish to serve. Id. ¶ 52. There is no guarantee that each of these locations will have space available for CLECs' equipment. Similarly, the ILEC's cable racks and risers may lack the spare capacity needed to support CLECs' tie cables, and the ILEC's Main Distribution Frame ("MDF") may lack sufficient space to install the new connector blocks needed to terminate these tie cables. Each of these capacity concerns threatens to extend the time and expense of collocation. Id. ¶ 53. Further, because BellSouth has refused to provide standard intervals for establishing collocated space, see id. ¶ 34, and has only the most limited experience in establishing such space in Louisiana, see id. ¶ 54, there is no way accurately to estimate how long this process would take. It is clear, however, that collocation in even a few offices will take at least many months and will entail substantial delay: Even when not confronted with the pressure of numerous CLECs seeking collocation in every central office, BellSouth has been unable to meet its commitments to provide collocated space and has often missed deadlines by several months. Id. ¶ 59.[10]

Market entry will also be limited by the manual work needed to establish the two cross connections on the MDF. Id. ¶¶ 61-69. Each loop/switch combination will require the

[10] See Florida PSC Order at 57-58 ("BellSouth's inability to establish physical collocations in a timely manner is still a problem which has a direct affect on [CLECs'] ability to compete meaningfully in the marketplace.").

coordinated effort of a team of technicians working under new methods and procedures. Id. ¶ 61. Current BOC assumptions of the time required to perform these tasks, such as Bell Atlantic/NYNEX's prediction that it could provision 143 orders a day in a large central office that might support over 200,000 lines, are both unimpressive and unrealistically high. See id. ¶¶ 62-68. Moreover, the manual constraints of BellSouth's collocation proposal will prevent CLECs from confidently engaging in mass marketing, for fear that such competitive efforts will create demand at a given central office far beyond what an ILEC can provision. Id. ¶ 69.

Requiring combination of the loop and switch through central office collocation also denies ILEC customers served by Integrated Digital Loop Carriers ("IDLC") and remote switching modules ("RSM") the benefits of competition. Id. ¶¶ 70-75. In an IDLC, a digital circuit carrying numerous multiplexed loops bypasses the MDF and connects directly into the switch. Separating an IDLC loop from switching in a manner that would comply with BellSouth's proposed collocation requirement can be done only through methods that are impractical and typically degrade customer service. Id. ¶¶ 70-74. In addition, loops served by a remote switching module terminate not on the MDF, but at a frame located at this remote site. Because the remote switch module is generally housed in a space only large enough for its own equipment, collocating equipment for recombining loops with switches also poses debilitating logistical problems. Id. ¶ 75.

c. Inherently inferior service quality

BellSouth's collocation requirement will also lead to inherently inferior service quality for CLECs who recombine the loop and switch. Falcone/Lesher Aff. ¶¶ 76-82. The collocation requirement puts unnecessary strain on congested MDFs and creates multiple points of failure on CLEC loop connections, causing increased service failures that will be disproportionately

borne by CLECs. Id. ¶¶ 76-78. Further, the collocation proposal complicates central office and repair procedures and needlessly increases the risk of human error and mechanical failure. Id. ¶¶ 79-81.

d. Excessive costs

Beyond the delay, disruption, and discrimination inherent in BellSouth's collocation proposal, a national entrant's incremental cost of manual recombination would foreclose large-scale UNE-based service. Recombination by collocation imposes immense "upfront" costs of site build-out and prewiring, customer migration costs, and monthly recurring costs of operating and maintaining collocation-related facilities. Falcone/Lesher Aff. ¶¶ 85-95. Using conservative estimates of additional costs that would be caused by a collocation requirement, a CLEC in Louisiana would need to pay more than $45 million in "upfront" costs, $46 in cross connect charges at every customer cutover, and an additional $1.40/customer monthly recurring charge. Id. ¶¶ 88-96. If Louisiana is any guide, the incremental costs for national entry attributable to the collocation requirement in the first year alone could easily exceed hundreds of millions of dollars, or more than $220 per customer. Id. ¶¶ 83, 96.

e. The need for alternatives to collocation

Further, BellSouth's proposal, which would require CLECs to purchase not only collocated space but also to contribute their own facilities (e.g., frames, cross connections, tie cables, and connector blocks), does not permit CLECs "to provide telecommunications services completely through access to the unbundled network elements of an incumbent LEC's network." Iowa Utils. Bd., 120 F.3d 753, 814 (8th Cir. 1997). It therefore conflicts with the CLECs' statutory right to purchase unbundled network elements without "own[ing] or control[ling] some portion of a telecommunications network." Id.